Filed 4/2/19 P. v. Burciaga CA5



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MANUEL BURCIAGA,<br><br>Defendant and Appellant. | F075245<br><br>(Super. Ct. No. F16903696)<br><br>**OPINION** |

**THE COURT**[*]

APPEAL from a judgment of the Superior Court of Fresno County. James A. Kelley and Houry A. Sanderson, Judges.[†]

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Clara M. Levers, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Franson, Acting P.J., Peña, J. and DeSantos, J.

[†] Judge Kelley presided at pretrial hearings. Judge Sanderson presided at the trial.

A jury convicted Manuel Burciaga (appellant) of willfully driving a vehicle on a highway in the direction opposite lawful traffic during flight from a pursuing peace officer (Veh. Code, § 2800.4), driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2, subd. (a)), and resisting, obstructing, or delaying a peace officer (Pen. Code, § 148, subd. (a)(1)).

On appeal, appellant contends the trial court used incorrect standards in revoking his pro se status and denying his subsequent requests to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta)*, and that the court's rulings were not supported by sufficient evidence. We conclude the trial court's rulings were based on the correct legal standards and supported by substantial evidence, and affirm.

## PROCEDURAL AND FACTUAL BACKGROUND[1]

At appellant's arraignment on the complaint in front of the Honorable Brant Bramer, appellant requested the court allow him to represent himself and filled out a "*Faretta* Questionnaire."[2] The court cautioned appellant of the dangers of self-representation, then addressed appellant's answers in a section of the questionnaire where appellant was asked to define certain legal terms such as "Peremptory Challenge" and "*Wheeler* Motion."[3] In this section appellant wrote "Offer, Acceptance, Consideration, Agreement, Liability, Honor, Affidavit." The court admonished appellant his criminal case does not involve contract law, and appellant replied, "I'm more like under the

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**1** We do not address the facts of appellant's underlying offenses because they are not relevant to the issues raised on appeal.

**2** On the "*Faretta* Questionnaire," a defendant is asked to describe his or her education and employment background, legal experience, and is asked whether he or she is familiar with certain criminal law terms and concepts.

**3** *People v. Wheeler* (1978) 22 Cal.3d 258.

impression I'm under admiralty jurisdiction," and stated he believed his case was "civil in nature." The court again informed appellant his case is a criminal matter, and repeated the dangers of self-representation. After additional discussion with appellant about the nature of the proceedings, the court concluded appellant made a knowing and intelligent waiver of his right to counsel, and granted appellant's *Faretta* motion. The court then arraigned appellant, appellant pled guilty to all charges listed in the complaint, and the matter was continued for sentencing.

At appellant's sentencing hearing, appellant filed a two-page letter titled "Removal of Judge," stating Judge Bramer should be removed from the case because he "held up a plea agreement and said the plea agreement was NOT a contract because I had expressed that I did not consent to be in any contract with anyone nor did I want to consent to Admiralty Maritime Jurisdiction." The letter also contains muddled references to the "California Code." The court allowed appellant to withdraw his plea, and Judge Bramer recused himself from the case based on appellant's request.[4]

The following week, appellant appeared in front of the Honorable James A. Kelley, for a pretrial hearing. The assigned prosecutor initially spoke with appellant off the record about a potential plea bargain, but then declared a doubt as to appellant's competence to stand trial pursuant to Penal Code section 1368. The court suspended criminal proceedings and appointed Dr. Howard B. Terrell to evaluate appellant.

During an interview with Dr. Terrell, appellant repeatedly asserted his criminal charges are civil in nature and can be resolved by paying a fine. Appellant also stated he wanted to represent himself because "he has had some lawyers conspire against him in the past and representing himself is the best way to avoid being the victim of another

[4] Judge Bramer did not articulate a legal basis for his recusal, only stating he was doing so based on "the defendant's express request to do so."

conspiracy." In his report, Dr. Terrell concluded appellant was competent to stand trial but not competent to represent himself, stating:

> "Although the defendant shows evidence of a paranoid and psychotic mental disorder, he currently understands the charges against him, has a marginal, but adequate understanding of the workings of a court of law and is presently capable of assisting his attorney in a rational manner for the preparation of a legal defense, should he choose to do so. It is therefore recommended that the court find Mr. Burciaga **mentally competent** to stand trial, so long as he has a California licensed **attorney** representing him.
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> "Given his lack of formal education, average intellect and flawed understanding of the California legal justice system, I do not believe that Mr. Burciaga is mentally competent to represent himself in a felony criminal trial. It is therefore recommended the court find Mr. Burciaga **mentally incompetent** to represent himself in a felony criminal trial." (original emphasis.)

At appellant's next court date, appellant submitted a letter to Judge Kelley that read in part:

> "I write this letter to express what my reasoning is behind my actions. I am acting in accord with what I believe to be facts regarding jurisdiction and form of action. § 307 of the CALIFORNIA CODE unequivocaly [*sic*] expresses there is in this State but one form of civil action only. This fact would render all matters before this court civil in nature. It is my belief that I have a civil obligation to pay if I [cannot] lawfully reject a claim made against my person. It is established by rule I can pay, perform, or accept. I accepted the claim made against my person in accordance with House Joint Resolution 192 of June 5, 1933 by placing 'Accepted' my signature and date on the face of the claim and returning it back to the State agent Liz Owen at 2220 Tulare St. Suite #1000 Fresno Ca 93721 for its value and complete satisfaction of the charges made. My acceptance was returned with a NOTICE OF ACCEPTANCE. The state has dishonored my acceptance and it is my intent to protest in a competent court. Be advised that I have used the word 'Person' in this letter. As is used in court the word has nothing to do with a human being which would further confirm that the Jurisdiction of the court is Admiralty Maritime. It is established in rule that a person must consent to Admiralty Jurisdiction in which I have expressed many times over that 'I do not consent.' My issue with the last court room was the judge[']s desire to force me to perform (go to prison)

> went against both my will and ability to pay. I request this court consider what is being said in this letter and be patient while I seek my remedy in the Court of Federal Claims [*sic*]."

The court reviewed Dr. Terrell's report and appellant's letter, and ruled appellant was competent to stand trial, but not competent to represent himself, stating: "Okay. I did receive a letter from Mr. Burciaga, … and he's expressing some legal theories which make absolutely no sense to me. I completely agree with Dr. Terrell that he doesn't have enough knowledge of the law to effectively represent himself." Appellant continued to assert his case was subject to civil law and admiralty jurisdiction, and the court replied, "I really don't believe that you're capable of representing yourself. So I'm going to appoint [counsel]." The matter was then set for further pretrial hearings and for preliminary hearing.

Appellant made two additional *Faretta* motions in front of Judge Kelley at subsequent hearings, and the court denied each motion based on Dr. Terrell's recommendation. Appellant again made a *Faretta* motion at the preliminary hearing, which was denied by the Honorable Wayne Ellison based on Dr. Terrell's report and Judge Kelley's prior ruling.

Appellant was held to answer at the preliminary hearing, and his case was later sent to the Honorable Houry A. Sanderson for jury trial. Appellant immediately renewed his *Faretta* motion and continued to assert his criminal case is controlled by civil law and subject to "admiralty rule." The court expressed concern about appellant's competency to represent himself and appointed Dr. Stephen R. Pointkowski to assess appellant's "mental competence for self-representation," citing *People v. Johnson* (2012) 53 Cal.4th 519, 530-531 (*Johnson*).

In his report, Dr. Pointkowski concluded appellant "appears to have a personality disorder and history of substance abuse, but no mental illness or cognitive impairment," and recommended appellant be found competent to represent himself. Dr. Pointkowski stated appellant "apparently demonstrated familiarity with specific statutes or cases. For

example, he alluded to 'house joint resolution 192,' which by his account allows every person to discharge debt, public or private, and compared it to a remedy." He also noted appellant believed his "attorney should be arguing his case within the context of 'contract law.' "

At appellant's next court date, the court first noted the purpose of Dr. Pointkowski's report was to assist the court in deciding whether appellant is competent to represent himself, but that his recommendation is not dispositive. The court then denied appellant's *Faretta* motion, and articulated its reasoning as follows:

> "So with that in mind, let me give you an indication as to what my plan is in this case. Having reviewed all of these documents and reviewed Dr. Pointkowski's report—not necessarily putting great stock in the conclusion that he reached, but in the information that he shared with the Court. The fundamental inability of Mr. Burciaga to understand the difference between criminal and non-criminal cases. Referencing House Joint Resolution 192—which I've looked up. And unless Mr. Burciaga believes it's something different, it's from 1933 discussing—and Mr. Burciaga is nodding now as I say this. Discussing claim resolution by paying debts to the Government, which continues to concern this Court about Mr. Burciaga's ability to properly represent himself. Competently represent himself. And so, though Dr. Pointkowski's conclusion is, certainly, different, that is not the tell-all in this case.
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> "That's my indication in this matter. And I'm not convinced … Mr. Burciaga, that it is in your best interest with all of this information presented to this Court that if I were to allow you to represent yourself, that you would do so competently."

The court further concluded appellant "falls within the guidelines of the various cases" court and counsel previously discussed on the record, which included *Johnson* and *Indiana v. Edwards* (2008) 554 U.S. 164 (*Edwards*).

After the denial of appellant's *Faretta* motion, the case proceeded to trial, and a jury found appellant guilty of all charges.

## DISCUSSION

Appellant contends the trial court applied incorrect standards in revoking his pro se status and denying his subsequent *Faretta* motions, and that the court's rulings were not supported by substantial evidence. We disagree.

A criminal defendant has the right to self-representation (*Faretta, supra*, 422 U.S. at p. 807), but the right is not absolute (*Edwards, supra,* 554 U.S. at p. 171). In *Edwards*, the United States Supreme Court held a trial court may limit a defendant's right to self-representation if it finds the defendant lacks the mental capacity to "conduct trial proceedings" without representation. (*Id.* at p. 178.) Observing the question of competence to stand trial is distinct from the question of competence to represent oneself,[5] the court concluded states may require a higher level of mental capacity for self-representation. (*Id.* at pp. 177-178.) The court declined to articulate a specific competency standard for self-representation but concluded "the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so." (*Ibid.*) The court further noted "the trial judge … will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." (*Id.* at p. 177.)

In *Johnson*, our state supreme court adopted the limitations on self-representation set forth in *Edwards*, concluding the appropriate standard for self-representation "is simply whether the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel." (*Johnson, supra*, 53 Cal.4th at p. 530.) The *Johnson* court also declined to

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[5] Penal Code section 1367, subdivision (a), states a defendant is not competent to stand trial if "as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner."

adopt a more specific standard but cautioned: "Criminal defendants still generally have a Sixth Amendment right to represent themselves. Self-representation by defendants who wish it and validly waive counsel remains the norm and may not be denied lightly. A court may not deny self-representation merely because it believes the matter could be tried more efficiently, or even more fairly, with attorneys on both sides." (*Id.* at p. 531.) The court suggested a trial court may order a psychological evaluation to inquire into the question of whether a defendant has the requisite mental competence for self-representation to supplement "the judge's own observations of the defendant's in-court behavior[.]" (*Id.* at pp. 530-531.)

"A ruling revoking a defendant's in propia persona status is reviewed for an abuse of discretion and ' "will not be disturbed in the absence of a strong showing of clear abuse." ' " (*People v. Doss* (2014) 230 Cal.App.4th 46, 54, quoting *People v. Welch* (1999) 20 Cal.4th 701, 735.) "The trial court's determination regarding a defendant's competence must be upheld if supported by substantial evidence." (*Johnson, supra,* 53 Cal.4th at p. 531.) However, the erroneous denial of a defendant's right to self-representation is reversal per se and not subject to harmless error analysis. (*McKaskle v. Wiggins* (1984) 465 U.S 168, 177, fn. 8; *People v. Joseph* (1983) 34 Cal.3d 936, 945-948.)

We focus our analysis on Judge Kelley's revocation of appellant's pro se status and Judge Sanderson's denial of appellant's *Faretta* motion before trial, because the other *Faretta* denials were based on Judge Kelley's initial ruling. The record indicates in ruling appellant was not competent to represent himself, Judge Kelley relied on Dr. Terrell's report, appellant's letters to the court, and appellant's comments in court. Dr. Terrell opined appellant showed evidence of suffering from "a paranoid and psychotic mental disorder," and recommended the court find appellant was not competent to represent himself. In his letter to the court and his comments on the record, appellant showed a bizarre fixation on irrelevant legal concepts such as admiralty jurisdiction, and

an apparent inability to accept his criminal case was not subject to civil law, despite repeated admonishments from the court. Contrary to appellant's assertion, his conduct did not demonstrate that he merely lacked formal legal training or a solid understanding of the legal system. Rather, appellant's words and actions were consistent with his suffering from a mental disorder as articulated by Dr. Terrell, and supported the court's finding appellant lacked the mental capacity to represent himself under the standard set forth in *Johnson*. Therefore, Dr. Terrell's conclusion, in conjunction with appellant's conduct, provided a reasonable basis for Judge Kelley to conclude appellant was incapable of representing himself due to mental illness.

Moreover, the record does not indicate Judge Kelley relied on an incorrect standard in revoking appellant's pro se status. Appellant contends the court's ruling was improperly based on the court's assessment of appellant's legal acumen or ability to conduct an effective defense. (*People v. Mickel* (2016) 2 Cal.5th 181, 206-207.) While Judge Kelley did not articulate a specific legal standard, his comments during the ruling and the materials upon which he relied lead us to conclude his ruling was based on appellant's mental capacity. After reviewing appellant's letter to Judge Kelley, it is apparent to this court that Judge Kelley's assessment that appellant expressed "some legal theories which make absolutely no sense" was not hyperbole. We agree Judge Kelley's belief appellant did not have "enough knowledge of the law to effectively represent himself" was not sufficient, in and of itself, to revoke appellant's pro se status. However, his review of Dr. Terrell's report, consideration of appellant's rambling and incoherent statements, and finding appellant was not "capable of representing" himself lead us to conclude Judge Kelley's ruling was based on appellant's inability to represent himself due to mental illness.

We also conclude Judge Sanderson's denial of appellant's renewed *Faretta* motion was based on the correct standard and supported by substantial evidence. Judge Sanderson did not verbalize the precise legal standard for self-representation on the

record, but referred to the competency standards set forth in *Edwards* and *Johnson*. After reviewing appellant's letters to the court and Dr. Pointkowski's report, Judge Sanderson concluded appellant did not meet those standards, pointing to appellant's continued fixation on irrelevant legal principles. Although Dr. Pointkowski recommended appellant be found competent to represent himself, Judge Sanderson was not required to follow his recommendation, and had ample reason to reach the opposite conclusion. Appellant's insistence his case was not governed by criminal law, despite months of criminal proceedings and numerous judges and attorneys attempting to convince him otherwise, provided a reasonable basis to believe appellant lacked the mental capacity to represent himself.

The standard of review for the denial of a *Faretta* motion and revocation of a defendant's pro se status vests the trial court with considerable discretion. Given appellant's conduct and apparent mental state, we cannot say the trial court's conduct was an abuse of discretion, let alone a "strong showing of clear abuse." (*People v. Doss, supra,* 230 Cal.App.4th at p. 54.) Although the trial court could have more clearly articulated the standards it used to determine appellant lacked the mental capacity to represent himself, the record does not lead us to conclude the court's rulings were based on incorrect standards.

**DISPOSITION**

The judgment is affirmed.